

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3762 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MONALISA APARTMENT CO-OP. HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

Appearance:

MR GN DESAI for Petitioners

MR SAMIR DAVE for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/02/97

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The order passed by the Deputy Secretary, Revenue department, Government of Gujarat, being order No.ULC.3482-72546-V dated 2-4-1983, reviewing thereunder the order passed by the Competent Authority under sec.22 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act, 1976) has given cause to the petitioner to file this Special Civil Application.

2. The facts giving rise to this petition move in narrow compass. The petitioner no.1 is a Co-operative Housing Society registered under the Gujarat Co-operative Societies Act, 1961, being registration No.Gh.9086 of 1982. The petitioners no.2 and 3 are its members. The petitioners entered into an agreement with the original owner of the land, bearing Survey No.124/B and Final Plot No. 165/B/1 admeasuring about 1987 sq. mts. situated in District, Sub-District Ahmedabad, Taluka City, Mouje village Kochrab, namely, Navinchandra Prahladbhai Patel and Rajnikant Prahladbhai Patel. In the revenue record, the land was entered in the name of Navinchandra Prahladbhai Patel and Rajnikant Prahladbhai Patel alongwith the superstructure viz. bungalow and out-house. That agreement to sale was entered on 18th December, 1980. The petitioner alongwith the owners of the land applied under sec.27(2) of the Act, 1976 for permission to sale and the said permission was granted by the Competent Authority and the Additional Collector vide its order dated 14th October, 1980. Thereafter, the sale deed has been executed on 18th December, 1980 in favour of the petitioner-Society and thereafter the Society also came into possession of the said land through its promoters. The day on which the permission has been granted for the sale of land, the said land was not an excess open land and there were constructions on the said land. The details of the constructed portion on the land are that, one bungalow admeasuring 445 sq. mts. and out-house admeasuring 98 sq.mts., in addition to that there was cabin also on the said land. The petitioners applied under sec.22 of the Act, 1976, to the Competent Authority for redevelopment of the plot held by the Society. At the time of filing of the application, the old constructions were demolished, and upto plinth area, the new constructions were made by the Society. Along with the application, the petitioners also produced the tax bills of the Ahmedabad Municipal Corporation for the old existing building like Bungalow, Old house, Watchman's room, Gate room, latrine and bathroom. After considering the material produced on record, the Competent Authority and Additional Collector was pleased to permit the petitioner to redevelop the plot, on certain terms and conditions, by an order dated 14th April, 1982. The petitioners received a show-cause notice, from the Government dated 25th June, 1982 under which the Government called upon to show cause why the order passed by the Competent Authority and Additional under sec.22 of the Act, 1976, shall not be reviewed. The interim order has also been passed restraining the Society from making any construction on the land till

final order is made by the State Government under sec.34 of the Act, 1976. The petitioners have made a reference to another show-cause notice dated 7-7-1982 of the Government under which they were called upon to show cause as to why the permission under sec.22 of the Act, 1976, dated 14th April, 1982 be not reviewed under sec.34 of the Act, 1976. The said notice was given on the ground that at the time when permission under sec.22 of the Act, 1976 was given there were existing structures and those structures were not demolished before the application was made or they were not destroyed or demolished solely due to natural cause and beyond the control of human agencies, and therefore, there is no jurisdiction to the Competent Authority and Additional Collector under sec.22 of the Act, 1976, to pass the order and therefore, that order, permitting the petitioner to redevelop the plot is without jurisdiction and illegal. The petitioners replied to the show-cause notice by their letter dated 20-7-1982 and hearing was afforded to the petitioners on 2-9-1982. It has been represented by the petitioners before the Government that the Society is registered under the Gujarat Co-operative Societies Act, 1961, on 1-9-1982, and as such, the land of the Society is exempted under sec.19(1) (v) of the Act, 1976, and therefore, the provisions of Chapter III of the Act, 1976, are not applicable to the Society and Society gets automatic exemption under sec.22 of the Act, 1976. The petitioners further represented that the Society got the sanction under sec.27 of the Act, 1976, and the land was purchased by a registered deed and that the order cannot be reviewed by the State Government. Further submission has been made that at the time when the permission under sec.22 was granted, the existing buildings were demolished and, therefore, there was no building which can be used on that day and the site inspection which was made by the Office of the Competent Authority and Additional Collector clearly indicates that there was no such building which can be used on the day when the permission was granted. It was also represented that when the permission was granted under sec.22, some of the old buildings were already demolished and the Society constructed the cellar and some other construction till plinth level and, therefore, the permission under sec.22 of the Act is not bad. None of the objections raised by the petitioners found favour with the State Government. The State Government under its order dated 2-4-1983 cancelled the permission granted under sec.22 of the Act, 1976, to the petitioner by the Competent Authority and the Additional Collector. Hence, this Special Civil Application before this court.

3. The respondents have filed reply to this Special Civil Application. In the reply, the respondents have come up with a case that under sec.22 of the Act, 1976, after the demolition of the existing building structure, the resultant vacant land may be considered for the purpose of calculation of Ceiling Area and if it exceeds the ceiling, then permission under sec.22 of the Act, 1976, may be given by the Competent Authority for reconstruction on such vacant land. The Competent Authority and Additional Collector, Ahmedabad, gave permission for redevelopment of the said land which was against the specific provisions of section 22 inasmuch as the land had not become vacant land either due to demolition on account of natural calamity or causes beyond the control of the holder or it had been demolished on his own motion and buildings and structures were in existence at the time of grant of such permission. So the order of Competent Authority was without jurisdiction. Further reply has been given that after following the procedure as laid down under sec.34 of the Act, 1976, the State Government has passed the order which does not call for interference of this court.

4. This writ petition has come up for admission before this court on 24th August, 1983, on which date, notice was issued. Thereafter, the matter has come up for admission before this court on 17th November, 1983, and this court has made the order, which reads as under:

"Rule. Interim relief in terms of Para 25(B).
To be heard with the Spl. C.A. No.202/83. Mr.
Hawa waives service."

5. The interim relief in terms of Para No.25(B) has been granted by this court. Para No.25(B) reads as under:

"Pending the admission, hearing and final disposal of this petition, this Hon'ble Court be pleased to pass an order of injunction from interfering with the construction work carried on, on the said land by the petitioners (restraining from declaring the said land to be an excess land under U.L.C. Act)."

6. This court has further directed that this matter be heard with Special Civil Application No.202 of 1983. The Special Civil Application No.202 of 1983 has already been decided by this court on 29th March, 1995.

7. The State Government has not given notice to the

petitioner for review of the order made by the Competent Authority under sec.27 of the Act, 1976. From the order impugned in this Special Civil Application also it is clear that the order passed by the Competent Authority under sec.27 of the Act, 1976, has not been revised. The State Government in its order has recorded a fact that the occupant-Society had purchased the land by registered sale deed after obtaining prior permission of the Competent Authority under sec.27 of the Act, 1976. In para No.15 of the Special Civil Application, the petitioner has submitted that the order of the Competent Authority passed in their favour under sec.27(2) of the Act, 1976, was not revised by the State Government on the ground that the said land is not in excess of the ceiling area. However, in the translation copy, which has been filed by the petitioners, of the order of the State Government, I do not find any finding in the order of the State Government. However, it is not the case of the respondent that the transferer has any land in excess of the ceiling limit. In case, the land in dispute was not in excess of ceiling limit in the hands of the vendor then it was not necessary for the petitioners to obtain any permission under sec.27 of the Act, 1976, as well as for the petitioners to take any permission under sec.22 of the Act, 1976. The requirement of taking the permission under the aforesaid two provisions would have been there only when the owner would have the land in excess of the ceiling limit. This aspect of the case has not been considered by the State Government while exercising the power of review under sec.34 of the Act, 1976. Apart from this, this court has granted interim relief in favour of the petitioners, meaning thereby, the court has permitted the petitioners by interim order to raise the construction on the land. This order has been passed years back and by now, as stated by the counsel for the petitioners and not controverted by the respondent, the construction has already been completed. So under the interim order of this court, the petitioners raised the construction on the land, and the construction is existing thereon. Now this subsequent event which has taken place, may be because of the court's order, needs further consideration. This court in the Special Civil Application No.202/83 has taken a view that where the land in the hands of the seller was not in excess of the ceiling limit then the purchasers of the land were not required to pray for permission under sec.27 as well as sec.22 of the Act, 1976. So in these circumstances, the matter requires to be given a fresh thought and consideration by the State Government.

8. In the result, this Special Civil Application

succeeds and the order of the passed by the Deputy Secretary, Revenue Department, Government of Gujarat, dated 2-4-1983 is quashed and set aside, and the matter is remanded back to the said authority with the direction to decide the matter afresh on merits in accordance with law and taking into consideration the observations of this court made in this judgment, and after hearing the parties. The petitioners are directed to remain present before the said authority on 7th April, 1997, and it is expected of the said authority to decide the matter within six months thereafter. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-